

Before the Board of Zoning Adjustment, D. C.

Application No. 11000, of the Clerics of Saint Viator, pursuant to Section 8207.1 of the Zoning Regulations for a use variance from the requirement of the R-1-B zone, to permit a nursing home for the aged, pursuant to Section 8207.1 of the regulations at the premises 1212 Otis Street, N. E., known as Lot 819, Square 3926.

HEARING DATE: September 18, 1974

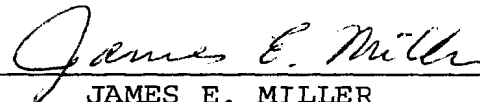
EXECUTIVE SESSION: February 25, 1975

ORDERED:

That the opposing parties' Motion for Reconsideration and or rehearing be and is hereby DENIED for lack of four (4) affirmative votes.

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED By:


JAMES E. MILLER

Secretary to the Board

FINAL DATE OF ORDER: **MAR 19 1975**

Before the Board of Zoning Adjustment, D. C.

Application No. 11000 of the Clerics of Saint Viator, Inc., pursuant to Section 8207.1 of the Zoning Regulations for a use variance from the requirements of the R-1-B zone as provided by Section 3101 and 8207.11 of the Zoning Regulations to permit a convalescent or nursing home at 1212 Otis Street, N. E., lots 19, 20, 21, 22, 34, 803 and 819, Square 3926.

HEARING DATE: September 18, 1974

DECISION DATE: December 10, 1974

FINDINGS OF FACT:

1. The subject property is located in Square 3926 and is zoned R-1-B which is defined by the Zoning Regulations as an area of single-family detached dwelling; medium density, are designed to protect quiet residential areas now developed with single-family dwellings and adjoining vacant areas are likely to be developed for such purposes. The R-1-B zone is designed to stabilize such areas and promote a suitable environment for family life.

2. The subject property consists of approximately 93,241 square feet of land, improved by a twelve year old modern religious seminary of approximately 29,000 square feet containing approximately 80 rooms and chapel on three floors and basement.

3. The westerly line of the subject property abuts a strip-commercial zone running along 12th Street, N. E.

4. Appellant requests permission from the Board of Zoning Adjustment to establish a convalescent nursing home facility in an already existing building located in an R-1-B District.

5. The seminary which exists on the subject property was built and has been used, pursuant to a special exception granted by the Board in application No. 5951.

6. This application was denied by the Board by Order dated March 28, 1973. After review of the Board's ordering denying this application, the D. C. Court of Appeals, in Case No. 7308, reversed the Board's denial and remanded the case for rehearing on the following issues:

- A. Whether or not the proposed use of the subject property will create traffic flow and parking problems inconsistent with the R-1-B residential neighborhood in which it would be located.
- B. Whether or not the increase of traffic and influx of commercial vehicles which would result from the proposed use, would alter the residential character of the neighborhood in which the proposed use would be located.
- C. Whether or not the applicant has been unable to dispose

of the subject property by transfer of the existing facility to other religious or educational institutions.

7. At present, there is a driveway access way to the subject property from Oakview Terrace, N. W., which serves a parking lot on the subject property and is in full view of those people residing behind the property on Oakview Terrace.

8. Residents of Oakview Terrace who oppose this application, testified that the entrance way to the subject property on Oakview Terrace, causes parking problems and creates a dangerous and objectionable traffic condition, because Oakview is not a through street, which forces residents of Oakview Terrace having no rear access to their property, and who must park on spaces adjacent to their homes, to either drive around the circle at the end of Oakview Terrace on the subject property enters the Oakview Terrace access way causing traffic congestion.

9. The opposition further testified that garbage trucks and other commercial vehicles who travel to the site via Oakview make a turn around the circle at the end of Oakview Terrace which is at an incline and proceed at high rates of speed from the subject property, creating a dangerous traffic condition.

10. The applicant at public hearing proposed, and stated willingness to close the access way to the subject property from Oakview Terrace by building a 6' wall fence across the driveway and relocating the access way to the existing parking facility from the Oakview Terrace side of the subject property to the east portion of the property on 13th Street, N. E., as indicated (on Exhibit 1.A.)

11. The Board finds that the use of Oakview Terrace, N. E. is an access way to the subject property, because of the width of that street, the parking problems which exist thereon, and the use of Oakview Terrace by heavy weighted commercial vehicles, that traffic flow to and from the subject property would create traffic flow and parking problems as well as impair the residential character of the neighborhood.

12. The proposed use of the subject property will not create traffic flow or parking problems inconsistent with the R-1-B residential neighborhood in which it will be located, in view of the parking arrangements proposed by petitioner and the access modification proposed by the petitioner, both of which are embodied as conditions in this Order.

13. Based upon expert testimony at public hearing, the Board finds that 8 delivery trips per week will be made to the subject site by commercial vehicles, and a total 97 trips per week to the site will be made by nursing personnel, administrative staff, physicians, visitors, and consultants.

14. Expert testimony at public hearing indicates that patients at a nursing home for the aged receive very view visitors, as opposed to a general hospital use.

15. The proposed use will be a 93 bed facility with a staff of 30, 15 of whom work the daytime shift.

16. No objections or opposition was made at public hearing to this application by residents of 13th Street, N. E. or Otis Street, N. E., who were duly notified of the public hearing.

17. The traffic flow of passenger and commercial vehicles which would be generated by the proposed use would not alter the residential character of the neighborhood in which the proposed use will be located.

18. Based upon the testimony of the applicant and the contract purchaser, the Board finds that good faith and vigorous efforts have been made to dispose of the subject property to other religious and educational institutions.

19. The Board finds that there are only three classroom facilities in the structure located on the subject property and that the applicant proposes to use them for therapy facilities.

20. Because of the unique purpose for which the now defunct seminary was constructed, and the design of that structure, the Board finds that the owner and applicant of the subject property is confronted with unusual circumstances in using and disposing the property consistent with its zone.

CONCLUSIONS OF LAW AND OPINION

Based upon the above findings of fact and the record, the Board is of the opinion that due to extraordinary and exceptional circumstances and conditions bearing uniquely upon the subject property and the structure located thereon, neither caused by nor controllable by the owner thereof that strict application of the Zoning Regulations causes an undue hardship upon the owner of the subject property as prescribed as the basis for the granting of a use variance by Section 8207.11 of these Regulations. The Board concludes that since the access way to the subject property shall be removed from Oakview Terrace, N. E., that the proposed use will not have an adverse affect by reason of objectionable traffic conditions on those persons who opposed this application.

The applicant, having satisfied the burden of proof prescribed by variance clause, the Board concludes as a matter of law that the granting of this variance will not substantially impair the meaning and intent of the Zoning Regulations and Maps.

ORDERED:

That the variance requested in this application be, and is hereby, GRANTED, subject to the following restrictions and conditions:

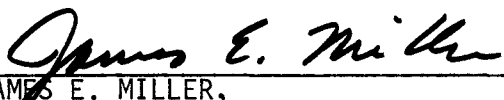
1. There shall be no pedestrian or vehicular access to Oakview Terrace, N.E. from the subject property.
2. There shall be constructed around the north perimeter of the subject property the six-foot wall-fence as indicated on Exhibit 1-A.
3. The parking for the subject property shall be relocated to the east portion of the property, as indicated on Exhibit 1-A, and shall be eliminated from lots 19, 20, 21, and 22.
4. Vehicular access to the subject property shall be from a new driveway from Otis Street, N. E., or from Thirteenth Street, N. E., if legally permissible, over private property to be acquired by the owner, if it should so elect, both as indicated on Exhibit 1-A.
5. That the patient occupancy of the nursing home use be limited to 93 persons.

VOTE: 3-0 (Mr. Klauber and Lilla Burt Cummings, Esquire abstaining.)

FINAL DATE OF ORDER: *12/13/74*

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


JAMES E. MILLER,
Secretary to the Board

THAT THE ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS ONLY UNLESS APPLICATION FOR A BUILDING AND/OR OCCUPANCY PERMIT IS FILED WITH THE DEPARTMENT OF ECONOMIC DEVELOPMENT WITHIN A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER.

Before the Board of Zoning Adjustment, D. C.

PUBLIC HEARING - November 29, 1973

Application No. 11000 Clerics of St. Viator, appellant

THE ZONING ADMINISTRATOR OF THE DISTRICT OF COLUMBIA, appellee

On motion duly made, seconded and carried by a vote of 3-1 with Mr. Harps dissenting, the following Order of the Board was entered at the meeting of January 23, 1973.

ORDERED:

That the application for variance from the requirements of the R-1-B District to permit convalescent or nursing home at 1212 Otis Street, N. E. lots 19, 20, 21, 22, 34, 803 and 819 in Square 3926 be DENIED.

FINDINGS OF FACT:

1. The subject property is located in Square 3926 and is zoned R-1-B which is defined by the Zoning Regulations as an area of single-family detached dwellings; medium density.

2. The westerly line of the subject property abuts a strip-commercial zone running along 12th Street, N. E.

3. R-1 Districts are designed to protect quiet residential areas now developed with single-family dwellings and adjoining vacant areas are likely to be developed for such purposes. The regulations are designed to stabilize such areas and promote a suitable environment for family life.

4. The subject property consists of approximately 93,241 square feet of land, improved by a twelve year old modern religious seminary of approximately 29,000 square feet containing approximately 80 rooms and chapel on three floors and basement.

5. The seminary was built in 1961, pursuant to a special exception granted by this Board in BZA Appeal No. 5951.

6. Appellant requests permission from the Board of Zoning Adjustment to establish a convalescent nursing home facility in an already existing building located in an R-1-B District.

7. The Board is obliged pursuant to the Palmer decision of February 1972 to adhere to the strict interpretation of Section 8207.11 of the Zoning Regulations providing for use variances.

8. In order to establish full reasons why relief should be granted under the use variance provisions the applicant must show by reason of exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations or by reason of exceptional topographic conditions or other extraordinary or exceptional situation or condition of a specific piece of property, the strict application of any regulation adopted under this Act would result in peculiar and exceptional practical difficulties to or exceptional and undue hardship upon the owner of subject property.

9. It is the applicant's contention that a substantial loss of several hundred thousand dollars would be suffered if he attempted to utilize the property for residential purposes due to the necessity of demolition, removal, and compacted backfield of the building and foundation plus the construction of access roads to serve subdivided lots.

10. It is applicant's further contention that the property is readily adaptable for use as a convalescent or nursing home and failure to grant the requested variance would deprive the owner of all beneficial use of the subject property.

11. Appellant submitted affidavits from some of the property owners showing no objections to the granting of the subject application.

12. General opposition was made as to the granting of this appeal which is currently a part of the file. The opposition's basic contention was the encroachment of a profit-making venture which is commercial in nature into a strictly residential area.

13. Considerable testimony was taken as to ingress and egress to the proposed facility. Different avenues were suggested by the applicant including entry from Otis Street or from 13th Street; applicant added that pedestrian and vehicular traffic from Oakview Street to and from the seminary property by way of the above mentioned streets would thus be eliminated.

14. On October 27, 1971 the applicant, Clerics of St. Viator, Inc., filed with the Board of Zoning Adjustment an application for a variance.

15. On December 8, 1971, the Board held a hearing on the application. Two residents of the neighborhood urged that the application not be granted unless the Board imposed certain conditions designed to protect the residential character of the neighborhood.

16. A third witness speaking on behalf of the Executive Board of the Brookland Civic Association flatly opposed the application because he believed the character of the neighborhood would be altered if the nursing home were to be permitted.

17. On December 14, 1971, the Board of Zoning Adjustment in Executive Session voted 4-1 to deny the application for a variance. Not waiting for the Board to issue an order accompanied by Findings of Fact and Conclusions of Law appellant filed with the Board of Zoning Adjustment a request for re-consideration. There is no indication in the request for re-consideration that the petitioner sent copies of the request to those persons who had testified in opposition to the application at the hearing.

18. At a January 21, 1972 B.Z.A. hearing on petitioner's request for re-consideration, counsel for petitioner appeared and argued that the Board of Zoning Adjustment had erroneously denied the application and therefore should reverse its decision. No one appeared at that public hearing on behalf of the opposition to petitioner's request for reconsideration.

19. On January 18, 1972, the Board of Zoning Adjustment in Executive Session by a 3-1 vote granted petitioner's motion for reconsideration.

20. The Board of Zoning Adjustment, on May 15, 1972 at its Executive Session unanimously decided that all previous B.Z.A. actions in this case should be vacated and a new hearing should be held on the application because there had been numerous written and oral ex parte communications between petitioner's counsel and various Board Members. Accordingly, on May 18, 1972, the Secretary of the Board of Zoning Adjustment, by letter, informed petitioner's counsel and those persons who had testified in opposition to the application for a variance that a new hearing would be held on a date to be selected by the Secretary.

OPINION:

After hearing all the evidence de novo of all public hearing and reviewing the evidence submitted to the file by both the applicants and the opposition, the Board has determined that this application shall be denied.

Applicant proposes to establish a commercial-profit making venture in a residential area (R-1-B). It is the policy of this Board to foster and maintain residential areas as they are zoned for single-family detached dwellings and to encroach upon a strictly residential area with a commercial facility is repugnant to the best interests of the people of the District of Columbia.

This Board takes this opportunity to reiterate to the applicant that it is obliged to adhere to the strict regulations as set forth by the Court of Appeals for the District of Columbia in the instant case of Palmer v. the Board of Zoning Adjustment which was decided February 17, 1972. The Court's instructions in that case dictated that future actions of the Board must be closely scrutinized for area and use variances. The Court further dictated to the Board that a greater quantum of evidence must be submitted in order to allow a use variance and a lesser amount of evidence must be submitted in order to allow an area variance. In our opinion applicant has not met his burden.

This Board has held in the past and continues to hold that economic and financial potential gain or loss will not alone substantiate relief from the strict interpretation of the regulations. Also, careful examination of the entire record does not indicate with any degree of assurance that traffic congestion, i.e. parking and other vehicular ingress and egress would not eventually pose a threat to this residential neighborhood.

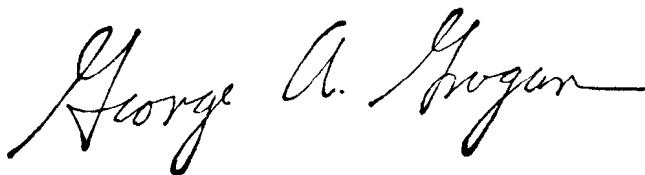
It is a long established policy of this Board that a head count is not used in denying or granting an application as to people who are in opposition or support. This Board listens to all relevant evidence, given by all interested parties involved and makes its determination based upon all facts relating to the Zoning Regulations and recent Court decisions with particular emphasis on the impact on the community as it is zoned.

We are of the opinion that appellant has not proved a hardship within the meaning of the variance clause of the Zoning Regulations and that a denial of the requested relief will not result in peculiar and exceptional practical difficulties and undue hardship upon the owner.

Further, we hold that the requested relief can not be granted without substantial detriment to the public good and without substantially impairing the intent, purpose and integrity of the zone plan as embodied in the Zoning Regulations and Map.

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED:



By: _____

GEORGE A. GROGAN
Secretary of the Board

March 28, 1973

BEFORE THE
DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT

IN RE: Application No. 11000
Clerics of Saint Viator, Inc., Appellant

ORDER

The order of the Board entered in this case on March 28, 1973, is hereby amended pursuant to the order of the court in Clerics of Saint Viator, Inc. v. District of Columbia Board of Zoning Adjustment, D. C. Court of Appeals, No. 7308, whereby the court remanded the record on review "to permit the Board to make additional findings."

SUPPLEMENTAL FINDINGS OF FACT:

1. The property, zoned R-1-B, is surrounded by single family detached residences, except that its westerly line abuts a strip commercial zone running along Twelfth Street, N. E. The existing building is located on the South end of Oakview Terrace, North of the right-of-way line of Otis Street and approximately 60' East of the western boundary of the property.
2. The property consists of approximately 93,241 square feet of land, improved by a twelve year old modern religious seminary of approximately 29,000 square feet containing approximately 80 rooms and chapel on three floors and basement.
3. The seminary is a structure consisting of thirty-eight (38) small sleeping rooms, each with clothes closet and wash basin and served by common facilities. It also contains eight two-room suites, each with a connecting bath, recreation and study rooms, and classrooms.
4. The seminary was built in 1961, pursuant to a special exception granted by this Board in BZA Appeal No. 5951.

5. The number of seminarians residing at the Viatorian Seminary has steadily declined in the last several years from a high of over thirty, which increased to over forty during the summer months, to a present enrollment of two.

6. The decrease in enrollment is due solely to the historical circumstances of decline in religious vocations and departure from the traditional seminary concept of theological education to a more dispersed format of education. The downward trend in enrollment is beyond the control of the seminary administration and continued operation as an independent seminary is not feasible.

7. Applicant requests a variance from the Board of Zoning Adjustment to establish a convalescent nursing home facility in the existing building in an R-1-B District. The variance would permit use of the structure as a nursing facility of 93 beds devoted to intermediate and residential care.

8. The subject property has a current assessed value of \$448,258.00 and a current appraised value of \$600,000.00 based upon a reproduction of improvement costs of \$483,500.00. There is no value based upon the marked data approach.

9. The applicant has been unable to transfer the facility to other religious or educational institutions.

10. The owner supports his request for a variance on the ground that development of the property for R-1-B use would result in undue financial hardship.

11. A substantial loss of several hundred thousand dollars would be suffered if applicant attempted to utilize the property for permitted residential purposes due to the necessity of demolition, removal, and compacted back of the building foundation plus the construction of access roads to serve subdivided lots.

12. The proposed use, convalescent and nursing home, will tend to increase density.

13. The primary access to the facility is up Oakview Terrace from Perry Street, which is lined with single-family detached homes. There is no throughway onto Twelfth or Thirteenth Street from the facility.

CONCLUSIONS OF LAW:

1. Use of property as a convalescent home is permitted as a matter of right in R-4 or less restrictive zones and thus is prohibited in an R-1-B zone.

2. The financial hardship complained of by applicant has resulted from a decline in enrollment at the seminary and not from any restriction upon the property contained in the regulations. Use of the property as a seminary resulted from the granting of a special exception by the Board in 1961, and the variance now being requested is based on a hardship resulting from use of the property in conformance with the requested special exception. Restrictions upon the property have had no effect whatsoever upon the decline in enrollment at the seminary or upon applicant's apparent difficulty in transferring the property for use by another educational or religious institution.

3. Applicant's difficulty is not related to or caused by exceptional topographical or other conditions inherent in particular parcel of land which is the subject of this application. Quite to the contrary, the hardship complained of has resulted from a situation created by the current owner of the property by express application to the Board for a special exception. The hardship of using the seminary structure in a manner consistent with R-1-B restrictions is not the result of a condition inherent in the land, and in fact the structure was not even existent at the time of adoption of the Zoning Regulations.

4. The decreased enrollment at the Viatorian Seminary is in accordance with the general decline in vocations for the priesthood over the last several years and is in no way related to restrictions placed upon use of the property. Furthermore, although the applicant's difficulty in converting the property for use in conformance with the regulations has been due in part to the presence of the dormitory-type structure on the property, the inability to continue operation of the Viatorian Seminary and the difficulty in using the property in some other similar manner have not arisen out of circumstances peculiar to the parcel of land.

5. The property is not so situated as to preclude its use for any purposes permitted under the regulations. Although the conversion of the property to single-family dwellings would result in a loss of several hundred thousand dollars, the property may be put to conforming residential or educational uses.

6. The R-1 District is designed to protect quiet residential areas, to stabilize such areas and to promote a suitable environment for family life. Only a few additional and compatible uses are permitted, and commercial ventures, in general, including convalescent homes, are excluded. A nursing home facility providing intermediate or resident care for 93 individuals will necessarily result in increased traffic over that generated by a religious seminary with an average enrollment of between thirty and forty. The quiet, stable, residential character of the neighborhood will be altered by a transient influence generated by the influx of commercial vehicles from establishments servicing the facility and private vehicles of persons employed at or visiting the home. Such a result clearly is not in harmony with the spirit and intent of the zoning regulations.

7. The purpose of the regulations is to provide for orderly development of land in a manner that gives adequate notice to citizens of any restrictions and alternatively

permits property owners the security of a stable neighborhood. The hardship complained of by appellant was of his own creation insofar as it results from the lack of interest in religious vocations throughout our society. However, the structure which is located on the land and the presence of which has been the major source of the difficulty complained of was erected by applicant twelve years ago with full knowledge of the zoning regulations and their restrictive provisions.

OPINION:

We are of the opinion that the above application should be DENIED.

The immediate area in which the subject property is located enjoys a stable single family residential status. And to permit a speculative commercial venture to be established will encroach upon this neighborhood and threaten its low density residential status. R-1 Districts are designed to protect quiet residential areas now developed with single family dwellings and adjoining vacant areas likely to be developed for such purposes. Primary consideration should be given to the rights, health and safety of the existing neighborhood and community. To permit the basic character of the present use to be changed to a nursing home would create the added threat of more cars in turn add measurably to pollution and congestion.

On motion duly made and seconded by a vote of 3-1, the following Order was entered at the Executive Session on January 23, 1973.

ORDERED:

That the application for variance from the requirements of the R-1-B District to permit convalescent or nursing home


Application No. 11000

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at 1212 Otis Street, N. E., Lots 19, 20, 21, 22, 34, 803,
and 819, Square 3926 be DENIED.

BY ORDER OF THE D. C. BOARD OF ZONING ADJUSTMENT

ATTESTED:

By 
JAMES E. MILLER
SECRETARY OF THE BOARD

EFFECTIVE DATE OF REMANDED ORDER 11000

JUL 13 1973